April 27, 2005

Morning Business Speakers:
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- Sen. Strangelove Or: How Democrats stopped winning and learned to love the filibuster. Pete Du Pont; *WSJ*; 4/27/05
- Filibuster Puts Bar Too High for Judges, Albuquerque Journal, 4/27/05

Senate Procedure 101:
Why Not Go 24/7 on Judges?

The Myth: Republicans are permitting Democrats to get away with a "gentlemen's filibuster" on the judicial confirmations. But to win, Republicans must force Democrats to talk 24/7 until they break.

The Facts: Despite conventional wisdom "Mr. Smith Goes to Washington," a "bring-in-the-cots" counter-measure has never been successful in breaking a filibuster. This is true even in their hey-day, when Democrat Majority Leaders fought southern Democrats. Moreover, the 24/7 counter-measure is not what many think it would be under the Senate rules. It is impossible to force Democrats to "talk till they drop" or "read from the phone book."

1. It's impossible to force Democrats to talk about a nominee beyond the first three hours of the legislative day. After that, they can talk about the war, the economy, or anything they want.

2. If Democrats tire of talking, they can simply suggest the absence of a quorum, which requires 51 Senators to show up to continue conducting business. If a quorum does not appear, the Senate must adjourn or at least suspend its proceedings until a quorum is established.

Consider this scenario: Democrats run out of things to say about a judge at 11 p.m. The Minority Leader suggests the absence of a quorum:

- Option A: Not enough Senators respond. The Senate is "stuck," and it must adjourn. Under this scenario, both parties sleep soundly through the night.
- Option B: A quorum is produced because all Republicans show up (Democrats can keep sleeping) and then debate on judges resumes. Under this scenario, Republicans are awake, and Democrats sleep. This works to the advantage of the filibustering Senators, so the burden rests on the Majority to ensure that the constitutional quorum requirement always can be met.
- Option C: Not enough Senators respond and the Sergeant At Arms is dispatched to bring absent Senators to the Chamber to vote. Once the quorum is produced, debate resumes. But at 2 a.m., the Democrats again note the absence of a quorum and once again the Republicans are back to Options A, B, or C.

According to Stan Bach of the Congressional Research Service (*Filibusters and Cloture in the Senate*, 1/17/01):

"… late-night or all-night sessions put as much or more of a burden on the proponents of the question being debated than on its opponents. The Senators participating in the filibuster need only ensure that at least one of their number always is present on the floor to speak. The proponents of the question, however, need to ensure that a majority of the Senate is present or at least available to respond to a quorum call or roll call vote. . . . This works to the advantage of the filibustering Senators, so the burden rests on their opponents to ensure that the constitutional quorum requirement always can be met."

Therefore, all-night counter-filibuster measures, while possibly great drama, are, in truth, maintained by the Majority, not the filibustering minority. Democrats may not show up for quorum calls, but Republicans need to stay up for nights on end to keep the Senate in session around the clock. Additionally, there may be long, drawn-out quorum calls in the middle of the night rather than Democratic Senators reading from the phone book and laboring to stay on their feet. So it doesn't look as dramatic as what Hollywood did with "Mr. Smith."

Sen. Hutchison Floor Statement 4/27/05
Justice Owen, "Constitutional Option"

Conference Vice Chairman demands action on judicial nominees

WASHINGTON – Sen. Kay Bailey Hutchison (R-TX), Vice Chairman of the Senate Republican Conference, today spoke on the floor of the U.S. Senate demanding an up-or-down vote on Texas Supreme Court Justice Priscilla Owen and other judicial nominees who have been obstructed by the minority in the Senate. Sen. Hutchison also commented on the "Constitutional Option" for voting on judges. Excerpts of her statement follow:

"Priscilla Owen was nominated to the 5th Circuit Court of Appeals four years ago – four years ago. She has been serving on the Supreme Court of Texas for four years while awaiting her confirmation by the U.S. Senate, yet she has actually had the votes to confirm her in the United States Senate four times. Four times she has received a majority. …

"This is really not a debate about Priscilla Owen. This is not a debate about this woman who has an impeccable record and an impeccable academic background. . . . I think it is about the Constitution and the requirement of advise and consent. The minority has changed the Constitution by filibustering judicial nominees for the first time in the history of the U.S. Senate. For the first time in the history of the U.S. Senate – over 200 years – we saw in the last session of Congress a filibuster of almost one-third of President Bush's Circuit Court nominees. No president has ever received fewer of his Circuit Court nominees than President George Bush. …

"For 70 percent of the last century, the same party controlled the Senate and the White House, but there was no use of partisan filibuster on nominees to prevent an up or down vote. ….

"It is not the rule that is being changed in this debate. It is the precedent of the United States Senate for the last 200 years that was changed in the last session of Congress by requiring 60 votes for confirmation of judges. … Two hundred years of Senate precedent is being torn apart. …

"A majority vote ensures the balance of power between the president's right to nominate and the Senate's role to give advice and consent. We are not only changing the tradition of the Senate with the filibuster of judicial nominees, we are changing the balance of power that was clearly set out in the Constitution and which has been one of the strengths of our democracy. …

"I would like for the tradition of the Senate for 200 years to be upheld without any need for a rule change. For 200 years, Democrats and Republicans have agreed on this principle."

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Floor Statement of Orrin G. Hatch

April 27, 2005

SEN. HATCH: Mr. President, in politics as in medicine, an effective prescription begins with an accurate diagnosis. I'd like to take a step back and offer a diagnosis of our current struggle over how to conduct the judicial confirmation process. I hope this will bring a few pieces together, connect some dots, and provide a little perspective.

Mr. President, the first principle is that every judicial nomination reaching the Senate floor deserves an up or down vote. This principle has constitutional roots, historical precedent, and citizen support.

I begin with the Constitution because that's where we should always begin. The Constitution is the supreme law of the land. Along with the Declaration of Independence, it is one of the foundational organic laws of the United States. It is the charter that each of us, as Senators, swears an oath before God to preserve, protect, and defend.

That Constitution separates the three branches of government, assigning legislation to us in the legislative branch and assigning appointments to the President in the executive branch.

We've heard that the Constitutional Convention considered other arrangements for appointing judges. That may be, but the Constitutional Convention *rejected* those arrangements. Rejected ideas do not govern us, the Constitution does. And the Constitution makes the President, in Alexander Hamilton's words, the *principal agent* in appointments, while the Senate is a check on that power.

Giving judicial nominations reaching the floor an up or down vote, that is, exercising our role of advice consent through voting on nominations, helps us resist the temptation of turning our check on the President's power into a force that can destroy the President's power and upset the Constitution's balance.

We have historically followed this standard. When Republicans ran the Senate under President Clinton, we gave each of his judicial nominations reaching the floor a final confirmation decision. We took cloture votes, that is, votes to end debate, on just four of the hundreds of nominees reaching us here. All four were confirmed.

In fact, even on the most controversial appeals court nominations by President Clinton, the Republican leadership used cloture votes to *prevent* filibusters and *ensure* up or down votes, exactly the opposite of how cloture votes are used today.

Mr. President, this principle that every judicial nomination reaching the Senate floor deserves an up or down vote not only has constitutional roots and historical precedent, it also has citizen support. I saw in the *Washington Post* yesterday a bogus poll framed in completely partisan terms, asking whether Senate rules should be changed "to make it easier for the Republicans to confirm Bush's judicial nominees."

I wonder whether that question had perhaps been written in the Democrats' new public relations war room. I am actually surprised that such a slanted politicized question did not get more than 66 percent support.

A more balanced, neutral, fair poll was released yesterday, asking whether Senate procedures should make sure that the full Senate votes, up or down, on every judicial nomination of any President. The results, not surprisingly, were exactly the opposite of the biased poll, with 64 percent of Americans, including 59 percent of moderates and almost half of liberals, embracing this common sense, fair, and traditional standard.

Mr. President, the second aspect of this diagnosis is that the judicial nominees being denied this traditional up or down vote are highly qualified men and women with

majority bipartisan support. Last week, I addressed how opponents of President Bush's nominees play games with words like *extremist*.

Just as they want to talk about a judicial appointment process the Constitution did not establish, these critics want to talk about everything but what these nominees do, or would do, on the bench. We know from abundant testimony by those who know these nominees best that, no matter how provocative their speeches off the bench or strongly held their beliefs in their heart and mind, these nominees are or would be fair, impartial, and even-handed on the bench. That's the real standard.

Mr. President, it's hard to believe that we are actually arguing over whether we should vote on judicial nominations and whether highly qualified nominees with majority support should be confirmed. And yet, the third part of this diagnosis is that Senate Democrats are trying to change our tradition of giving judicial nominations reaching the Senate floor an up or down vote. Senators, of course, are free to vote against them for any reason and we must, of course, have a full and vigorous debate about these nominees and their qualifications.

The critics, however, don't want to have that debate. Democrats in this body, and the left-wing interest groups enabling them, want only to seize what they cannot win through the fair, traditional system. Beginning in the 108th Congress, for the first time in American history, they are now using the filibuster not to debate, but to defeat, majority supported judicial nominations.

They are trying to rig the confirmation process, to pry us away from our tradition that respected the separation of powers, and force us into a brave new world which turns the judicial appointment process inside out. They want to turn our check on the President's appointment power into a force that highjacks that power altogether. That would be serious, and constitutionally suspect, if a Senate *majority* did it. It is even more serious when, as we see today, a *minority* of Senators tries to capture the process.

For two years now, we have heard claims that these filibusters are nothing new, that they have been part and parcel of how the Senate has long done its confirmation business. While some questions in this debate may be subjective and complex, this is not one of them. The current filibusters target majority supported judicial nominations and defeat them by preventing confirmation votes. Either that happened before the 108th Congress or it didn't.

Mr. President, let's look at what our Democratic colleagues have claimed.

On March 11, 2003, Senator Leahy displayed here on the Senate floor a chart titled *Republican Filibusters of Nominees*. He said his list proved that Republicans have "succeeded in blocking many nominees by cloture votes." Anyone can look it up for his or herself, the whole chart is right there on page S3442 of the Congressional Record.

It turns out that only six of the 19 names on the chart were judicial nominations, that the Senate actually confirmed five of them, and the other one did not have majority support.

Far from justifying today's filibusters, Senator Leahy's chart proved no precedent exists at all.

On November 12, 2003, Senator Leahy tried again, this time with a list of what he claimed were Clinton appeals court nominees supposedly blocked by Republicans.

Once again, the list included nominations the Senate confirmed.

How can a confirmed nomination be called a blocked nomination? It can't.

Not a single nomination on Senator Leahy's list is similar to the nominations being filibustered today.

That same day, November 12, 2003, Senator Durbin named five judicial nominations which he said had been filibustered.

Once again, not one of them is a precedent for the filibusters happening today. You'd think no one with a straight face would claim that ending debate and confirming nominations is somehow precedent for not ending debate and refusing to confirm nominations.

On April 15, 2005, the distinguished Assistant Minority Leader, Senator Durbin, expanded his previous list, now offering us 12 examples of what he said were judicial nominations requiring at least 60 votes for cloture to end a filibuster.

I addressed this in more detail last week. Not one of Senator Durbin's supposed precedents is any precedent at all. The first nomination on his list occurred in 1881, 36 years before we even had a cloture rule. In fact, if we truly did what he apparently wants us to do, and treat his listed examples as a confirmation guide, we would vigorously debate judicial nominations, invoke cloture if we need to, and then vote on their confirmation.

This game continued as recently as two days ago. On Monday, April 25, on CNN's *Crossfire* program, the leader of a prominent left-wing group claimed that more than 30 nominations had been filibustered. I have their list in my hand right here, it is titled *Filibusters of Nominations*. It lists 13 judicial nominations, and not one of them is at all like the filibusters being conducted today.

We did not even take a cloture vote on two of them, we invoked cloture on eight of them, we confirmed 12 of them, and one did not have majority support. Accepting such fraudulent arguments requires believing that ending debate on judicial nominations is the same thing as not ending debate, that confirming judicial nominations is the same thing as not confirming them, that judicial nominations without majority support are the same as those with majority support.

As you can see, Mr. President, the propaganda merchants on the other side have been working overtime. In addition to the bizarre claims I just described, they work to turn what once was considered common sense and accepted fairness into something that sounds sinister and unseemly. They manufacture nasty phrases like *court-packing* and ominous warnings about *one-party rule*. Now, we are told, preventing up or down votes on even majority supported judicial nominations is the only way to prevent our entire constitutional order from imploding. The sky is falling, and we are all about to slide into the abyss.

The purveyors of this fantasy would have us look to President Franklin Delano Roosevelt who, they tell us, wanted to pack the Supreme Court. The Senate rejected his legislative

proposal to expand the Court so he could appoint more Justices. By taking this stand, the storytellers say, the Senate kept one-party rule from packing the Court.

As Paul Harvey might say, here's the rest of the story. The Senate, even though dominated by President Roosevelt's own party, did not support this legislative plan. And it turns out President Roosevelt did not need any legislative innovations to pack the Supreme Court. He packed it all right, doing it the old-fashioned way, by appointing eight out of nine Justices in just six years. Mind you, during the 75th to the 77th Congress, Democrats outnumbered Republicans by an average of 70 to 20. Now *that's* one-party rule.

In those years, from 1937 to 1943, our cloture rule applied only to bills. This meant that ending debate on other things, such as nominations, required unanimous consent. A single Senator in that tiny beleaguered minority could conduct a filibuster of President Roosevelt's nominations and thwart the real court-packing that was in full swing.

If the filibuster is the only thing preventing one-party rule from packing the courts, and the filibuster was so easily used, *surely* there were filibusters of President Roosevelt's Supreme Court nominations. If the warnings, frantic pleas, and hysterical fundraising appeals we hear today make any sense at all, the filibuster would *certainly* have been used in FDR's time. I hate to burst anyone's bubble, but there were no filibusters, not even by a single Senator, not against a single nominee. In fact, FDR's eight Supreme Court nominees were confirmed in an average of just *13 days*, and six of the eight without even a roll call vote.

Even when we look at the very examples and stories the other side uses, we see no support for using the filibuster against majority supported judicial nominations. Last week, here on the Senate floor, Senator Durbin repeated a selective version of this FDR story and asked what would happen today in a Senate dominated by the President's party. He asked: "Will they rise in the tradition of Franklin Roosevelt's Senate?"

Mr. President, let's hope we do. Let's hope the Senate does exactly what Franklin Roosevelt's Senate did, by debating and voting on the President's judicial nominations. Franklin Roosevelt's Senate did not use the filibuster, even when the minority was much smaller and the filibuster much easier to use, and this Senate should not either.

Finally, Mr. President, the fourth piece to this diagnosis of our current situation is that Senate Democrats have threatened to blow up the Senate if the majority moves us back to the tradition of debating and voting on judicial nominations. Imagine that, trying so hard to avoid doing what most Americans believe Senators come to Washington to do, debate and vote.

I said a few minutes ago that the Constitution's separation of powers assigns legislative business to Congress and executive business, including appointments, to the President. Senators on the other side of the aisle are saying that if they cannot highjack what is not theirs, they will blow up what is. If they cannot abandon Senate tradition and use the filibuster to defeat majority supported judicial nominations, they will undermine and blow up the legislative process. Unbelievable. And they call us radical.

Mr. President, the Constitution gives the power of nomination and appointment to the President. The Senate provides a check on that power. I believe we must preserve

that system of separated and checks and balances and resist those would up-end that system, who would turn the Senate's check on the President's power into a force that can overwhelm the President's power.

Mr. President, every judicial nomination reaching the Senate floor deserves an up or down vote. That principle has constitutional roots, historical precedent, and citizen support.

President Bush has sent highly qualified nominees who we know have bipartisan majority support. They deserve to be treated decently and, after a full and vigorous debate, given an up or down vote.

Senate Democrats are trying to change our tradition. For the first time in more than two centuries, they want to use filibusters to block confirmation votes on judicial nominations here on the Senate floor. This radical innovation is not needed to prevent one-party rule from packing the courts; if Republicans resisted using the filibuster under Roosevelt, Democrats should resist using it today.

And finally, all Americans should be most concerned that Senate Democrats appear willing to blow up the Senate's legislative business because they cannot capture its confirmation business. If they cannot seize control of a judicial appointment process that does not belong to the Senate, Democrats will shut down the legislative process that does belong to the Senate. This cannot stand.

As Majority Leader Bill Frist put it a few days ago, I never thought it was a radical thing to ask Senators to vote. That's what we have traditionally done on judicial nominations that reach the floor, and that traditional standard should apply across the board, no matter which party controls the White House and no matter which party controls the Senate.

That's the diagnosis, Mr. President, and I hope we see an effective prescription soon so we can get back to doing the people's business.

I yield the floor.

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Sen. Strangelove
Or: How Democrats stopped winning and learned to love the filibuster.

BY PETE DU PONT
Wednesday, April 27, 2005 -WSJ

Sen. Barbara Boxer is a longtime opponent of judicial nomination filibusters. Or she was. Suddenly the light has dawned, and she realizes how wrong she was to oppose them: "I thought I knew everything. I didn't get it. . . . I am here to say I was totally wrong."

Other Democratic senators have had similar changes in belief: Joe Biden and Robert Byrd, Tom Harkin, Ted Kennedy, Joe Lieberman, Pat Leahy, Chuck Schumer and their erstwhile colleagues Lloyd Bentsen, and Tom Daschle have all vigorously opposed the use of the filibuster against judicial nominations. Mr. Schumer was for voting judicial nominations "up or down" without delay. Mr. Leahy flatly opposed a filibuster against Clarence Thomas's Supreme Court nomination: "The

president and the nominee and all Americans deserve an up-or-down vote." Mr. Harkin believed "the filibuster rules are unconstitutional," Mr. Daschle declared that "democracy means majority rule, not minority gridlock," and Mr. Kennedy that "senators who believe in fairness will not let the minority of the Senate deny [the nominee] his vote by the entire Senate."

But that was then, when Democrats controlled the Senate. Now, they are a frustrated minority and it is different. Mr. Leahy has voted against cloture to end filibusters 21 out of 26 times; Mr. Kennedy, 18 out of 23. Now all these Senators practice and defend the use of filibusters against judicial nominees.

This fundamental change in deeply held liberal beliefs has made a difference. Sen. Orrin Hatch notes that in the 108th Congress (2003-04) the Senate "voted on motions to end debate on judicial nominations 20 times. Each vote failed." Of the 51 judicial nominees President Bush has put forward for the circuit courts of appeals, 35 have been confirmed, 10 have been "debated" without conclusion--filibustered--and six were threatened with a filibuster so no action has been taken on their nomination. Mr. Bush nominated Justice Priscilla Owen of the Texas Supreme Court for the Fifth U.S. Circuit Court of Appeals almost four years ago. She has the highest possible rating from the American Bar Association but has been filibustered four times by a Senate minority that once devoutly believed filibustering was morally wrong and clearly unconstitutional.

So what of this supermajority rule requiring a three-fifths vote to end judicial confirmation "debate" in the Senate and force a vote? Why is it here, where did it come from, and should it be part of the Senate rules?

This rule is not a constitutional requirement. The Constitution requires a two-thirds vote to override a presidential veto, pass a constitutional amendment, approve treaties or expel a member of Congress. But all it says about judges is that they are appointed by the president with "the Advice and Consent of the Senate." Absent a constitutional requirement for a supermajority, a majority vote is sufficient. The U.S. Supreme Court affirmed that principle in 1892.

When the Senate first established its rules in 1789, there was no such thing as a filibuster. A simple majority could move the previous question and vote on the matter before it. That was reversed in 1806 and the rules required unanimous consent to end debate; one senator could filibuster anything. In 1917 President Wilson, frustrated by a dozen Senators filibustering a wartime defense bill, observed that "the Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action." He successfully pressed the Senate to adopt Rule XXII, requiring only two-thirds instead of all senators to end debate on a pending statute. In 1975 that rule was amended to reduce the number to three-fifths, or 60 Senators.

The filibuster has historically been used to block the passage of substantive measures--such as the antilynching bills of the 1930s, and the direct election of the president in the 1970s. And they will be used in the future--Sen. Schumer said on Monday that he would filibuster the energy bill because it is too kind to Big Oil. A filibuster is also likely to stop personally owned Social Security accounts if such legislation reaches the Senate floor.

Current Senate rules prevent filibusters of some substantive matters--among them budget resolutions, trade agreements and the use of military force to protect America. But they do not limit the filibustering of judicial nominees. Some argue for abolishing the filibuster altogether, so that every legislative proposal reaching the Senate floor should be voted up or down and an angry minority would never be able to stop votes from occurring. The New Yorker's Hendrik

Hertzberg says that the filibuster should not be elevated "into a moral principle"--that if the Republicans get rid if it for judicial nominations the Democrats should "get rid of it for everything else too." But Senate Majority Leader Bill Frist's proposal is not about that question. It is about eliminating the filibuster only for considering judicial nominations.

Should the 60 votes required to end a judicial nominee's filibuster be done away with by adopting a nonfilibuster rule for judicial confirmations? It was branded a "nuclear option" by Sen. Trent Lott, a phrase media critics and Democratics have embraced, but it is in fact a sensible choice. In America's representative democracy there is a constitutional intention that majority congressional votes be determinative on all but a very few enumerated matters. Confirming presidential judicial nominations is not one of them.

So when Mr. Frist offers his rule change in the next week or so, the Senate should pass it. Ms. Boxer may not vote for it, but five will get you 10 that if the Democrats one day regain control of the Senate, it will take her less than 20 seconds to decide that she had been totally wrong a second time--that judicial filibusters now should never be allowed.

Albuquerque Journal
April 27, 2005
Opinion

Filibuster Puts Bar Too High for Judges

Despite the cumbersome robes, Texas Supreme Court Justice Priscilla Owen has managed to jump some pretty high bars. She garnered 84 percent of the vote in her 2000 campaign for re-election. She received the American Bar Association's highest rating as a nominee for the federal appeals court.

But since 2001, she hasn't been able to get the time of day on the Senate floor because Democrats will filibuster confirmation. That means Owen has to have a super majority of 60 votes -- the number it takes to close off a filibuster. That bar is too high.

Democrats like to stress the number of U.S. District Court judges confirmed during the Bush administration. But the higher courts are the battleground, and there, Democrats have been able to hold Bush's confirmation rate (69 percent) well below that of recent presidents.

The Senate minority has used the filibuster or the threat of it on an unprecedented scale to deny Owen and 15 other appeals level nominees what the Constitution envisions, a straight majority vote.

Despite the time-honored Senate rule establishing senators' right to hold the floor and talk until death or until 60 votes can be rounded up, the time-honored norm has been to defer to the president, especially when the president's party holds a Senate majority.

What happens when traditions are trampled in the interest of short-term political goals? Other customs that have worked well become vulnerable to the escalating partisan crossfire over judicial nominees. For example, Judiciary Committee practice has been not to send a nomination to the floor without the accord of the senators from the nominee's state. Now that rule has been broken in the case of Michigan nominees.

The next level of escalation wasn't too hard to see coming: The majority party threatens to remove the filibuster option on judicial nominees. If that sounds radical, consider that 19 Democrats -- including Sens. John Kerry, Edward Kennedy, Barbara Boxer and Jeff Bingaman -- moved to eliminate the filibuster in 1995 when Democrats wielded majority power.

What they failed to do then, they may goad the Republican majority into accomplishing with

regard to judicial nominations now. It would be an action both parties eventually could come to regret. The filibuster has allowed the minority to apply the brakes to majority will over the decades -- but it was not intended to be a stone wall.

Senate leaders should keep talking and trying to avert a showdown on the filibuster. Democrats might negotiate for a Bush pledge to forgo recess appointments, to seek more pre-nomination advice along with Senate consent, and for expanded floor debate.

But, after every senator has had his moment on the floor, there should be a straight majority vote on the vast majority of this or any other president's nominees.

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Floor Statement of Senator Talent
4/27/05

Mr. President, I am here to talk about judicial nominations. I feel like we have spent al altogether too much time on judicial nominations. In the last two years, I think, 150 hours on judicial nominations. Not even supreme court nominations, court of appeals nominations. We've been told over and over again how important they are. They are important. They are the second highest court in the country. We should point out there are only three levels in the country. So the second highest court is also the second lowest court. They do the day-to-day appellate business of the federal court. It is important but it is not worth filibustering the Senate and on instructing it to death and prevent a vote on the nominees. That's basically my message today.

For 216 years, Mr. President, no nominee, the first 216 years of that Senate, actually that's not right, 214 years, no nominee for the federal court of appeals was ever successfully filibustered on the floor of this Senate. There were groups of Senators in recent years that tried filibusters, embryonic filibusters that were cut off and defeated because of leadership of both parties, Majority and Minority Leadership opposed those filibusters on the grounds that it is a mistake for the Senate to get in the business of filibustering nominees and that was until a couple years ago the uniform point of view.

Senator Boxer said -- and I'm not picking out Senators in any particular order. I guess they are alphabetical. She said, the President nominates and the Senate shall provide advice and consent. It's not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees of being given a vote on the floor.

Senator Daschle, I find it simply baffling that a Senator would vote against even voting on a judicial nomination. We have a Constitutional outlet for antipathy against the nominee. Vote against the nominee, if you want. But I'm adding, this is not Senator Daschle, let them have a vote.

Senator Feinstein, a nominee is entitled to a vote. Vote them up, vote them down but vote on them. Senator Feinstein again, "our institutional integrity requires an up door down vote. I couldn't agree more, Mr. President. We'll get to that later. If I don't have so many digressions I use my 25 minutes.

Senator Kennedy -- we owe to the nominees to give them a vote. If you don't like them, vote against them, but give them a vote.

Senator Leahy now the ranking member on the judiciary committee, former Chairman of that committee. I cannot recall the judicial nomination being successfully filibustered. I do recall earlier this year when the republican Chairman of the judiciary committee and I noted how improper it would be to filibuster a judicial nomination. Yes, he's right.

Senator Leahy again, I do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41 Senators.

See with 41 Senators out of 100, if we allow the filibuster in these cases, you can stop a nominee from ever coming to a vote. So nominees with bipartisan, majority support on the floor of this Senate don't even get a vote if we allow filibusters in these cases. That's been the case with all these nominees.

I could go on and on with quotes. I'm not going to do it. For 214 years, we never had one successful filibuster of a court of appeals nominee. Not one supported by the leaders of either party and then in the last two years, we have had 10 successful filibusters and six other threatened ones.

So what is happened, Mr. President? Is there something extraordinarily wrong with these nominees? No. I'm going to go over two of them who are now before us again, justice Priscilla Owen from Texas. I do not know her. I did not insist that she come in and speak to me before I was going to vote on her nomination. Don't want to get into that here is her history, she was a partner with the well-respected Texas law firm of Andrews and Kirth. She made partner, Mr. President, I never did. She practiced commercial litigation for 17 years. She earn a B.A. cum laude. After graduating from law school she earned the highest score on the state on the Texas bar exam.

Justice Owen served on the Texas Supreme Court since 1995. She is a Supreme Court judge in Texas. She person who can't get even get a vote here. For the last ten years a Supreme Court judge in Texas. She was reelected to her second term by 84% of the vote. Every major newspaper in Texas endorsed her. She can't get a vote here.

She has significant bipartisan support including from three former democratic judges on the Texas supreme court. I'll read that in a minute.

Justice Janice Rogers Brown from California. She is the daughter of sharecroppers. She was born in Greenville, Alabama in 1949. She attended segregated schools in the era of Jim Crow. She moved to Sacramento, California. Her family did. She got a BA in economics from California State in 1974 and her law degree in the UCLA Law school. She has received honorary law degrees from Pepperdine University, Catholic University law school and Southwestern school of law. That's three more honorary degrees than I have, Mr. President.

She currently serves and is associate justice. She is another justice on a skate supreme court, can't get a vote here. She's held that position since 1996 and before that she was on the intermediate state appellate court. She can't get a court to get on the federal court of appeals. She is the first african-American woman to serve on California's highest court.

She was retained with 76% of the statewide vote in the last election. 76% of the people in California decided to keep her on the court. I go on and on with her honorary degrees. She spent 24 years in public life in various legal capacities. She is experienced in judicial matters in other governmental matters as a lawyer. She can't get a vote here. Being filibustered.

And some of my colleagues say these and the other eight of them, you ask them why, well, they are too extreme. They are not in in the mainstream. Mr. President, I wish every federal judge on the bench today had the qualifications of these people and the bipartisan support of these people. The people who know them best from their own states don't think they are too extreme. Let me find these. This is about justice Owen from Raul Gonzalez former justice on the supreme court of Texas. I found her to be apolitical, extremely bright diligent in her work and of the highest integrity. I guess he would support a vote since he says we ought to confirm her. Here another chief justice after years of observing her work, can I assert with evidence that her approach to judicial decision making is retrained. Her opinions are fair and well-reasoned. Her integrity is beyond reproach. I personally know how impeccable her credentials are.

This is from a democrat in Texas, one of her colleagues. Jack Hightower a former democratic justice on the supreme court of Texas. He says, "I'm a democrat. My political philosophy is democratic but I have tried not to let preconceived philosophy influence my decision on matters in the court and I believe Justice Owen has done the same."

These are from the state bar of Texas, although we express different party affiliations, we stand united in affirming that justice owen say truly unique and outstanding candidate for appointment to the fifth circuit court of appeals. The status of profession in Texas has been significantly enhanced by justice owen's advocacy of pro bono service and leadership for the membership of the state bar of Texas. They go and on. These 15, bipartisan former President's of the state bar of Texas about justice priscilla owens and she can't gets a vote here

. The tradition, 215 year tradition of not filibustering a court of appeals nomination is broken to keep people like this from not getting a vote. Same things can be said of justice janice rogers brown who really appears to be a -- really extraordinary person. Bipartisan group of 12 of her current and former judicial colleagues says, "much has been written about justice brown's humble beginnings and the story of her rise to the California supreme court is truly compelling but that alone would not be enough to gain our endorsement for a seat on the federal bench for her. We believe justice brown is qualified because she's a superb judge. We who have worked with her on a daily basis know her to be an extremely intelligent, keenly analytical and hard working. We know she is a jurist

who applies the law without favor, without bias and with an even hand." and she can't get a vote.

The 214 we're tradition of not filibustering judges and we're breaking it because -- to keep people like this woman from getting on the federal bench, even get age vote, because she is not in the mainstream.

Here is the truth, Mr. President, okay? There isn't any one judicial mainstream. Just like there's no one mainstream of political philosophy here in this Senate. Judges disagree about issues just like we disagree about issues. The point is to disagree without being disagreeable. Disagree while recognizing that the other person has a valid point of view and the fact that you don't agree with them doesn't make them automatically unfit even for a vote to serve on the federal judiciary. President Clinton appointed a lot of judges during his time in office who were a lot more liberal than I would have liked. I probably wouldn't have appointed very many of them. I can't say they are out of the mainstream. They represent the views of tens of millions of people in this country. When you say somebody disagrees with you is out of mainstream, you are slandering everybody who supports their views. It's not the right thing to do. It's extremely divisive. When you hear people in this body say somebody else isn't in the mainstream, when they are saying is that the other person disagrees with me.

And sometimes if you are a confrontational person, you follow this logic, you say, they don't agree with me, therefore they are not the mainstream and then you add the filibuster on top of that, and you say, therefore I'm not only going to not vote for them, which is the first mistake, then you say I'm not going to let them have a vote. You say they and everybody like them in the whole country, in this Senate, doesn't even deserve a vote on whether they are qualified for public office. And then we wonder, Mr. President, why this place gets divisive and why it's hard to operate. Because we're not showing respect to people who may disagree with us.

My wife says sometimes to me, Mr. President, when she wants to bring me down to earth, I'm on my high horse, she says, Jim, wouldn't the world just work wonderfully if everybody would only agree with you all the time about everybody." Well, we don't agree with each other about everything. We have a vote and we go on and we try and concentrate on the areas where we do agree, like the highway. -- highway bill. The worst thing about this and there's a lot of bad things about what is happening with regard to the filibustering of the nominations, the breaking of this 214-year tradition.

The worst thing, Mr. President, is it's resulting in the slandering and the credentials and the careers of these people. There's an old saying -- people will forgive you the wrong you do them. But they'll never forgive you the wrong they do you. Because once, for whatever reason, they've done something that is wrong to you, they may decide, you know, I gotta make that person out to be bad to justify the wrong I did in the first place.

Filibuster these people, breaking the tradition to do that don't let them have a vote. These people who have bipartisan majority support on the floor. To justify that you have to say

things about their records that distort their histories of public service and qualifications as the people who know them best have said.

And the second worst thing about this whole thing, Mr. President, is the fact that there are now large parts of political community that in this country and even here that in order to support this effort and to win this battle that is going on are treating the filibuster like it's a great thing. My heavens, Mr. President, there are groups that have made a mascot out of the filibuster.

Filibuster is an extraordinary obstructive tactic that is not even permitted in most legislative bodies and that even in the advocates of it say it should be used sparingly. The case is actually being made here on the floor of this Senate that the filibuster is part of our deliberative process, that it promotes calmness and coolness, compromise, moderation. Is this calmness? Holding these votes up for years, is this coolness? Is this compromise? We've used the filibuster for the first time in 214 years, taking yet another step with this device. Making it more common, a device that even the advocates of it say should be used very sparingly. And you want to know why, Mr. President? I'll explain why. It has to do with dynamics of a legislative body. If you care passionately about an issue before the Senate -- and we should care passionately about these issues -- and you know that that issue is going to come up for a vote, what are you going to do? If you know it's going to come up for a vote and the majority is going to win, what are you going to do? You're going to appeal to the middle, aren't you? You're going to seek arguments and amendments and methods that get the middle with you. That encourages compromise. If you don't have the middle with you and you know it's going to be voted on and you know a majority is going to win, what's going to happen to your position? I mean, even Senators can figure out that math. You're going to lose. The majoritarian process promotes compromise and discussion, because it empowers the middle.

Filibusters empower the extreme. And not just extreme philosophically. They empower the confrontational people. I have nothing against people who take that point of view. And you need some of them in a legislative body. But you've got to be careful how much you empower them. The people who say, look, if it isn't the way I want it, it's not going to happen at all. It's got to be my way or the highway, that's what filibusters empower.

And I'm not saying we shouldn't have it on the legislative calendar. But we've got to remember there's a cost to it. You want to know why we don't have an energy bill? Because of the filibuster. And there's lots of other examples of legislation that the country has wanted and needed that have been held up here with the filibuster. It is a tactic with a cost. It should be used sparingly, and it should not be extended in areas where it has not been used in the past on a bipartisan consensus. That's the reason all these distinguished Democratic Senators said for years on the floor of this body we're not going to filibuster judicial nominations because they knew what would happen.

Mr. President, we can be certain of one thing. The same standard is going to be applied in this body from President to President. I don't want the filibuster standard applied. I don't want a situation where because I disagree with a judicial nominee of a democratic

President, that I am expected as a matter of course, because that's the protocol in this Senate, not to permit a vote.

I believe -- and it was the tradition here for years -- that even if you disagreed with a nominee, if they were competent and they had integrity, you voted to confirm them out of respect for the process that elected that President and respect for the people and the party that that person represented. Even if you disagreed, if they were a good person you voted to confirm them. And that's what I want to do in this Senate year by year.

But the very least, we have to allow a vote. Let's keep the tradition of 214 years in the Senate. Let us allow a vote on these people, all of whom have bipartisan majority support on the floor of the Senate. Let's not continue doing an injustice to the reputation of these fine Americans. Let's preserve the traditions of the Senate, have this vote and then move on to other things.